

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application. Claims 26-49 are currently pending. Claim 26, 33, 37 and 44 and 45 have been amended, and claims 48 and 49 have been added by the present amendment. The Examiner is respectfully requested to reconsider her rejections in view of the Amendments and Remarks as set forth hereinbelow.

REJECTIONS UNDER 35 U.S.C. §§ 102 & 103

Claims 26-32, 35-43, 46 and 47 stand rejected under 35 U.S.C. § 102(e) as anticipated by Ferre et al. Claims 33, 34, 44 and 45 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ferre et al. in view of Anthony. These rejections are respectfully traversed.

Independent claim 26 includes a combination of elements and has been amended to further recite that the at least three fiducial markers are in different vertical lines from one another, the vertical lines being substantially perpendicular to the frame. Independent claim 37 includes similar features in a varying scope.

These features are supported at least by a non-limiting example in Figs. 1 and 4. For example, Figs. 1 and 4 illustrates the at least three fiducial markers 6 are in different vertical lines from one another, the vertical lines being substantially perpendicular to the frame 3.

The Office Action states that Ferre et al. discloses that the frame is capable of contacting only the nose of the subject and located in front of a plane defined by the eyes of the subject without immobilizing the subject's head (see page 3 of the Office Action). The Office Action further states that Ferre et al. discloses at least three fiducial markers (equating to the fiducial

balls 116 of Ferre et al.) mounted on the frame (see page 3 of the Office Action). As shown in Fig. 18 of Ferre et al., the fiducial balls are placed so that certain fiducial balls are in the same vertical line with one another. For example, the three fiducial balls on the left side are in one vertical line, and the three fiducial balls on the right are in another vertical line (see Fig. 18 of Ferre et al.), and thus some of the fiducial balls in Ferre et al. are in the same vertical lines. Therefore, Ferre et al. does not teach or suggest that the at least three fiducial markers are in different vertical lines from one another, the vertical lines being substantially perpendicular to the frame, as recited in amended independent claims 26 and 37. Further, Anthony fails to overcome the deficiencies of Ferre et al. In addition, to rely on a reference under 35 U.S.C. 103, the prior art must be analogous to the applicant's field of endeavor. Because Anthony is directed to a device for treatment of BPPV, rather than a frame with fiducial markers, Anthony is not an analogous art. Therefore, Ferre et al., even when combined with Anthony, fails to teach or suggest the features of amended claims 26 and 37.

Further, claim 33 has been amended to recite, among other features, that the supporting element is attached to the frame such that the supporting element forms a closed loop. Claim 44 recites similar features in a varying scope.

The Office Action equates the center member 34 and the side members 30 of Ferre et al. to the frame and the supporting element of the claimed invention (see page 3 of the Office Action). As shown Figs. 1 and 18 of Ferre et al., the side members 30 do not form a closed loop, but rather forms an open loop. Therefore, Ferre et al. fails to teach or suggest that the supporting element is attached to the frame such that the supporting element forms a closed loop, as recited

in amended claims 33 and 44. Further, Anthony fails to overcome the deficiencies of Ferre et al., and as discussed above, Anthony is not an analogous art. Hence, Ferre et al., even when combined with Anthony, fails to teach or suggest the features of amended claims 33 and 44.

Accordingly, it is respectfully submitted that independent claims 26 and 37 and each of the claims depending therefrom are allowable.

Claims Added

Claims 48 and 49 have been added for the Examiner's consideration. Applicants submit that claims 48 and 49 depend, either directly or indirectly, from independent claims 26 and 37, respectively, and are therefore allowable based on their dependence from claims 26 and 37 which are believed to be allowable. In addition, claims 48 and 49 recite further limitations which are not disclosed or made obvious by the applied prior art references.

Consideration and allowance of claims 48 and 49 are respectfully requested.

CONCLUSION

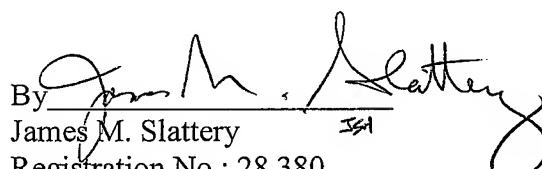
In view of the above remarks, it is believed that the claims clearly distinguish over the patents relied on by the Examiner, either alone or in combination.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone David A. Bilodeau at (703) 205-8072 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-1448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly extension of time fees.

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Respectfully submitted,

By 
James M. Slattery
Registration No.: 28,380
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicants

JMS:DAB:JSH:jmc